

JAN 17 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JORGE CRUZ-RODRIGUEZ,

Defendant - Appellant.

No. 05-10410

D.C. No. CR-04-00104-KJD

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Kent J. Dawson, District Judge, Presiding

Submitted January 9, 2006^{**}

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Jorge Cruz-Rodriguez appeals the 52-month sentence imposed following his guilty plea conviction for illegal reentry following deportation, in violation of

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

8 U.S.C. § 1326. We have jurisdiction pursuant to 18 U.S.C. § 3742(a), and we affirm.

Cruz-Rodriguez, sentenced under advisory guidelines in the wake of *United States v. Booker*, 125 S. Ct. 738 (2005), contends that under the rule of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the district court violated his Sixth Amendment rights by imposing a sentence in excess of the two-year maximum set forth in 8 U.S.C. § 1326(a) based on a prior felony drug trafficking conviction that was neither proved to a jury nor admitted during the plea colloquy. This contention is foreclosed. *See, e.g., United States v. Brown*, 417 F.3d 1077, 1078-79 (9th Cir. 2005) (noting that *Booker* did not change the rule that *Apprendi* carves out an exception for proving the fact of a prior conviction); *United States v. Moreno-Hernandez*, 419 F.3d 906, 914 n.8 (9th Cir. 2005) (stating that a sentence enhancement based on the fact of a prior conviction “does not raise any Sixth Amendment problems” post-*Booker*).

AFFIRMED.